

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.**
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

MAR 29 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

ABDULKADIR A.,)	
)	
Appellant,)	2 CA-JV 2009-0107
)	DEPARTMENT B
v.)	
)	<u>MEMORANDUM DECISION</u>
ARIZONA DEPARTMENT OF ECONOMIC)	Not for Publication
SECURITY and KAYMAURY F.,)	Rule 28, Rules of Civil
)	Appellate Procedure
Appellees.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J-18600300

Honorable Peter W. Hochuli, Judge Pro Tempore

AFFIRMED

Nuccio & Shirly, P.C.
By Jeanne Shirly

Tucson
Attorneys for Appellant

Terry Goddard, Arizona Attorney General
By Dawn R. Williams

Tucson
Attorneys for Appellee Arizona
Department of Economic Security

V Á S Q U E Z, Judge.

¶1 Abdulkadir A. appeals from the juvenile court’s September 2009 order terminating his parental rights to his now two-year-old son, Kaymaury F., an “Indian child” within the meaning of the Indian Child Welfare Act, 25 U.S.C. §§ 1901 through 1963 (ICWA). *See* 25 U.S.C. § 1903(4).¹ Abdulkadir argues the evidence at the contested termination hearing was insufficient to prove he had substantially neglected or willfully refused to remedy the circumstances that caused Kaymaury to remain in court-ordered, out-of-home placement for nine months or longer. *See* A.R.S. § 8-533(B)(8)(a). Because we find substantial evidence supported the termination, we affirm.

¶2 In its order terminating Abdulkadir’s parental rights, the juvenile court found as follows:

After DNA established that [Abdulkadir] was [Kaymaury’s] father, the ADES [Arizona Department of Economic Security] offered services to [him]. But for the psychological evaluation and visitations until he was incarcerated, he chose to not utilize those services. Parenting classes could have provided him with skills to raise a child in the future. He was inconsistent with the random drug testing. He failed to contact the ADES from January 6, 2009, until he appeared at the next court hearing, claiming that he was getting his own services and that he would provide proof of those services to the Court. He has failed to do so.

Abdulkadir does not dispute these findings. Instead, he maintains ADES failed to establish it had made a diligent effort to provide him with appropriate reunification services, as required by § 8-533(B)(8), or active but unsuccessful efforts to prevent the breakup of Kaymaury’s Indian family, as required by the ICWA, 25 U.S.C. § 1912(d).

¹Kaymaury’s mother, Crystal F., is an enrolled member of the Tohono O’odham Nation.

Specifically, Abdulkadir, a native Somalian who immigrated to the United States around 2003, argues Child Protective Services (CPS) failed to implement the recommendations made by Dr. Philip Balch, the psychologist who evaluated Abdulkadir. *See Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, ¶ 37, 971 P.2d 1046, 1053 (App. 1999) (reunification efforts less than diligent when ADES “neglects to offer the very services that its consulting expert recommends”).

¶3 “We will not disturb the juvenile court’s order severing parental rights unless its factual findings are clearly erroneous, that is, unless there is no reasonable evidence to support them.” *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, ¶ 2, 982 P.2d 1290, 1291 (App. 1998). Moreover, we view the evidence and reasonable inferences to be drawn from it in the light most favorable to sustaining an order terminating parental rights. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 13, 53 P.3d 203, 207 (App. 2002). At the termination hearing, Balch testified he had recommended that ADES provide Abdulkadir with a “culturally relevant course of treatment,” offered, “[at] a minimum, [by] a therapist or service provider [who] speaks his [native] language,” and “optimally,” by “people who are familiar with his culture.” But, although Abdulkadir contends Balch had made this recommendation “in no uncertain terms,” Balch’s December 2008 evaluation report was less emphatic. There, Balch had opined, “present assessment suggests that [Abdulkadir] should be offered a number of services to include services geared toward maintaining sobriety and . . . developing prosocial and non-addictive coping skills.” Balch noted his findings were tentative and that it would be useful to have more information about Abdulkadir’s

history, adding, “He should be encouraged to engage in a culturally relevant course of treatment” and “to seek assistance from agencies such as Vocational Rehabilitation or other education/job training agencies.”

¶4 As the juvenile court noted in its termination order, CPS offered Abdulkadir a psychological evaluation, a referral to Arizona Families F.I.R.S.T. (AFF), parenting classes, domestic violence classes, relative home studies, supervised visitation, and case management. CPS also scheduled monthly child and family team (CFT) meetings to address reunification efforts, with an interpreter present to assist Abdulkadir as needed.²

¶5 CPS case manager Trina Nuno was assigned to Kaymaury’s case in May 2008, and testified she had explained to Abdulkadir that his participation in an assessment by AFF was critical because it was the first step in obtaining other reunification services. But Abdulkadir failed to contact that agency, and because he had also failed to apprise CPS of changes of his address and telephone numbers, AFF had been unable to contact him. Nuno ultimately arranged for an AFF representative to attend a CFT meeting with Abdulkadir to conduct the required assessment, but, after Abdulkadir was referred for services, he attended only one relapse prevention session. Similarly, although Abdulkadir had begun attending a series of parenting classes with one agency, he was asked to leave that program after he reportedly threatened Crystal during one of the class sessions.

²Balch had reported Abdulkadir had “reasonably good verbal skills” when communicating in English; as a result, “it was only infrequently necessary to gain the assistance” of the interpreter CPS had provided.

¶6 In January 2009, Abdulkadir abruptly left a CFT meeting after telling Nuno he was receiving services elsewhere and would no longer report to CPS about his compliance with case plan tasks; instead, he said, he would report his completion of case plan requirements directly to the juvenile court. It appears this meeting was Abdulkadir's last contact with CPS before the termination hearing began in May. He was arrested at least once in the months that followed the meeting, and he remained incarcerated through the termination adjudication hearing. Nuno and Tohono O'odham Nation child welfare specialist Kathleen Carmen both opined at the hearing that ADES had made sufficient efforts, under both state and federal standards, to provide appropriate reunification services to Abdulkadir, even though service providers may not have been conversant with his native language or culture.³

¶7 The juvenile court has set forth its extensive factual findings and its legal reasoning in a fashion that has permitted this court and will allow any court in the future to understand its conclusions. We need not repeat that analysis here. *See Jesus M.*, 203 Ariz. 278, ¶ 16, 53 P.3d at 207-08 (App. 2002), *citing State v. Whipple*, 177 Ariz. 272,

³As ADES points out, Abdulkadir suggests ADES must do more to prove “active efforts” to prevent the breakup of an Indian family under the ICWA than to prove “a diligent effort” to reunify a family under Arizona law. Because Abdulkadir cites no authority and develops no argument in support of this assertion, we decline to consider it. *See* Ariz. R. Civ. App. P. 13(a)(6) (argument in opening brief “shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on”); Ariz. R. P. Juv. Ct. 106(A) (Rule 13, Ariz. R. Civ. App. P., “appl[ies] in appeals from final orders of the juvenile court.”); *cf. State v. Carver*, 160 Ariz. 167, 175, 771 P.2d 1382, 1390 (1989) (“In Arizona, opening briefs must present significant arguments, supported by authority, setting forth an appellant’s position on the issues raised. Failure to argue a claim usually constitutes abandonment and waiver of that claim.”).

274, 866 P.2d 1358, 1360 (App. 1993). Furthermore, the court's findings and conclusions are fully supported by the record. We therefore adopt the court's findings of fact, approve its conclusions of law, and affirm the order terminating Abdulkadir's parental rights. *See id.*

GARYE L. VÁSQUEZ, Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

J. WILLIAM BRAMMER, JR., Judge